

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2011-KA-00944-COA**

**J.C. WILLIAMS**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

DATE OF JUDGMENT:	10/12/2009
TRIAL JUDGE:	HON. BILLY JOE LANDRUM
COURT FROM WHICH APPEALED:	JONES COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	BENJAMIN ALLEN SUBER
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: LISA LYNN BLOUNT
DISTRICT ATTORNEY:	ANTHONY J. BUCKLEY
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTED OF SALE OF COCAINE AND SENTENCED AS A HABITUAL OFFENDER TO FORTY YEARS, WITH TEN YEARS SUSPENDED AND THIRTY YEARS TO SERVE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS
DISPOSITION:	AFFIRMED - 12/04/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

**BEFORE LEE, C.J., BARNES AND FAIR, JJ.**

**LEE, C.J., FOR THE COURT:**

¶1. A jury in the Jones County Circuit Court found J.C. Williams guilty of sale of cocaine. Williams was sentenced as a habitual offender to forty years, with thirty years to serve in the custody of the Mississippi Department of Corrections and ten years suspended. Williams filed post-trial motions, which the trial court ultimately denied. Williams now appeals,

asserting the trial court erred in amending the indictment to charge him as a habitual offender. Finding no error, we affirm.

#### DISCUSSION

¶2. Williams argues the trial court erred in amending the indictment after trial had commenced. On October 9, 2009, the State filed a motion to amend the indictment to charge Williams as a habitual offender. The motion indicates the State faxed a copy of the motion with notice to Williams’s trial counsel the same day. Williams’s trial began on October 12, 2009, and the trial court granted the State’s motion to amend the indictment that day.

¶3. Rule 7.09 of the Uniform Rules of Circuit and County Court states an indictment may be amended to charge the defendant as a habitual offender. Rule 7.09 further states any amendment “shall be allowed only if the defendant is afforded a fair opportunity to present a defense and is not unfairly surprised.” According to the record, the State faxed the motion to Williams’s trial counsel on October 9, 2009. Williams did object to the State’s motion, arguing that the motion was brought in order to punish Williams for exercising his right to a jury trial. But at no time has Williams claimed he was unable to present a defense or that he was unfairly surprised.

¶4. On appeal, Williams has offered no evidence to show he was “unfairly surprised” by the amendment or that he was unable to present a defense. Furthermore, since an amendment charging a defendant as a habitual offender does not affect the substance of the crime charged, but only the sentencing, Williams’s defense to the sale-of-cocaine charge was unaffected by the amendment. *See Adams v. State*, 772 So. 2d 1010, 1020-21 (¶¶50-51) (Miss. 2000) (citation omitted). This Court in *Rayborn v. State*, 961 So. 2d 70, 72 (¶¶5-7)

(Miss. Ct. App. 2007), affirmed the trial court's decision to allow the amendment of the indictment to reflect habitual-offender status when the State filed the motion to amend two days prior to trial. We find Williams's argument to be without merit and affirm.

**¶5. THE JUDGMENT OF THE JONES COUNTY CIRCUIT COURT OF CONVICTION OF SALE OF COCAINE AND SENTENCE OF FORTY YEARS AS A HABITUAL OFFENDER, WITH TEN YEARS SUSPENDED AND THIRTY YEARS TO SERVE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO JONES COUNTY.**

**IRVING AND GRIFFIS, P.JJ., BARNES, ISHEE, ROBERTS, CARLTON, MAXWELL, RUSSELL AND FAIR, JJ., CONCUR.**